IN THE HIGH Court OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2066 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL MADHABHAI MULABHAI - Petitioner(s)
Versus
VEJIBEN JIVABHAI BHAMBHI & 3 - Respondent(s)

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Appearance :
MR JV JAPEE for Petitioner(s) : 1,
MR SATYAM Y CHHAYA for Respondent(s) : 1 - 2.
RULE SERVED BY DS for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/04/2006

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner - purchaser of the land in question has challenged the legality and validity of the order passed by the Deputy Secretary, Revenue Department (Appeals), State of Gujarat dated 13-

11-1995 passed in Revision Application No.SRD/HKP/SBR/14/94 in dismissing the same and confirming the order passed by the Collector, Sabarkantha dated 19th July, 1994 passed in RTS/Revision/20/94 in cancelling the revenue entry in favour of the petitioner.

2. The dispute is with regard to the land bearing survey No.58, which according to the petitioner he has purchased by the registered sale deed in the year 1972 and the necessary entry was mutated in the revenue record vide entry No.404 dated 20-12-1972. It appears that respondent Nos.1 and 2 challenged the said revenue entry after a period of almost twenty years by making an application before the Collector, Sabarkantha alleging *inter alia* that the land in question has been taken away by the petitioner by taking disadvantage of mental disorder of the husband of respondent No.1 and father of the respondent No.2 herein and that the Collector, Sabarkantha by its order dated 19th July, 1994 set aside the entry No.404 by holding that the said entry is contrary to the Bombay Land Revenue Rules and further directed to mutate the names of the heirs of original land owners i.e. Jivabhai Kuberbhai Bhambhi. Being aggrieved by and dissatisfied with the order passed by

the Collector, Sabarkantha dated 19th April, 1994, the petitioner preferred revision application before the Additional Chief Secretary (Appeals) Revenue Department, State of Gujarat, which came to be heard by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat and the Deputy Secretary by its judgment and order dated 13-11-1995 dismissed the said revision application confirming the order passed by the Collector, Sabarkantha dated 19th July, 1994 passed in RTS/Revision/20/94. Being aggrieved by and dissatisfied with judgment and order passed by the Deputy Secretary, the petitioner - purchaser of the property of the land in question has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri JV Japee, learned advocate appearing on behalf of the petitioner has vehemently submitted that the land in question came to be purchased by the petitioner in the year 1972 by registered sale deed and the necessary entry was mutated in the revenue record in the year 1972 itself vide entry No.404 and respondent Nos.1 and 2 challenged the said entry after a period of 20 years and the Collector ought not to have entertained the said application after a period of 20 years, more

particularly, the sale deed in favour of the petitioner has never been challenged. It is also further submitted by him that as such the revenue authority is required to give effect to the registered sale deed in the revenue record subject to the dispute if any and therefore, it is submitted that both the authorities below have materially erred in cancelling the revenue entry No.404, which was in favour of the petitioner and therefore, it is requested to allow the present Special Civil Application.

4. Shri Satyan Chhaya, learned advocate appearing on behalf of respondent Nos.1 and 2 while supporting the orders passed by both the authorities below, has submitted that it is held by both the authorities below that proper procedure was not violated as required to be violated under the provisions of the Bombay Land Revenue Rules and that even the thumb impression of one Kankuba was obtained, though she was not alive on that day and considering the aforesaid thing, when the entry in favour of the petitioner has been cancelled, no illegality has been committed by both the authorities below. He has relied upon the observations made by the Deputy Secretary i.e. the revisional authority in para 5 of the impugned order and therefore, it is requested to dismiss the

present Special Civil Application.

5. Heard the learned advocate appearing on behalf of the parties.

6. It is not in dispute that the petitioner purchased the land in question in the year 1972 by registered sale deed and that necessary entry was mutated in the revenue record vide entry No.404 dated 20-12-1972. It is also not in dispute that the said entry came to be challenged by respondent Nos.1 and 2 by making an application before the Collector after a period of 20 years. In catena of the judgments, the Hon'ble Supreme Court as well as this Court has held that the revisional authority is required to exercise its power within a reasonable period. Twenty years cannot be said to be reasonable time. Under the circumstances, as such the Collector ought not to have exercised the revisional jurisdiction after a period of twenty years, more particularly, when the sale deed has not been challenged by respondent Nos.1 and 2 before the competent civil Court. In absence of any challenge to the registered sale deed and so long as the registered sale deed is in existence and unless and until it is decided, the revenue authority is required to give effect to the

sale deed and/or is required to make necessary entry in the revenue record with regard to such sale deed. The aforesaid aspect has not been considered by the revisional authority while confirming the order passed by the Collector cancelling the entry No.404 dated 20-12-1972. At this stage, the decision of this Court in the case of **Ganeshbhai Manilal Mayavanshi V State of Gujarat and Others** reported in 2005(9) GHJ 634 as well as in the case of **Gandabhai Dalpatbhai Patel V. State of Gujarat** reported in 2004(7) GHJ 201 is required to be referred to.

7. Considering the aforesaid facts and circumstances and considering the aforesaid two decisions of this Court, the impugned order passed by the Collector, Sabarkantha dated 19th July, 1994 as well as the judgment and order passed by the revisional authrity i.e. the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 13-11-1995 passed in SRD/HKP/SBR/14/94 are required to be quashed and set aside and the entry No.404 dated 20-12-1972 is required to be restored subject to challenging the sale deed in favour of the petitioner by respondent Nos.1 and 2 before the competent civil Court, if permissible.

8. For the reason as stated above, the petition succeeds. The order passed by the Collector, Sabarkantha dated 19th July, 1994 as well as the judgment and order passed by the revisional authrity i.e. the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 13-11-1995 passed in SRD/HKP/SBR/14/94 are hereby quashed and set aside and the entry No.404 dated 20-12-1972 is hereby restored. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J.)

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